

(1987) 04 MAD CK 0012
In the Madras High Court

New India Assurance Company Ltd.

APPELLANT

Vs

Smt. Janaki and Another

RESPONDENT

Date of Decision : 22-04-1987

Acts Referred:

Citation : (1987) 100 LW 747 : (1987) 2 MLJ 495

Hon'ble Judges : Swamikkannu, J

Bench : Single Bench

Judgement

Swamikkannu, J.—This is a case in which it has been elicited from the driver of the scooter involved in the accident that he had only a

learner's licence during the time of the accident while he was driving the scooter. Neither the temporary licence of R.W. I for driving a scooter nor

the Insurance policy had been produced in this case which are vital documents inasmuch as the contract of insurance is one exhibiting the principle

of uberrima fide, and that even if there is a noncompliance of a term in the contract it will be sufficient for exonerating the liability of the Insurance

Company. Therefore, this Court is of the opinion that the Award has to be set aside and the matter remitted back to the Tribunal for deciding the

issues in this case in the light of the observations made above.

2. In this regard, the learned Counsel for the first respondent herein referred to the report regarding "Supreme Court ruling on Accident Insurance

Claim" published in Indian Express, Madras, Sunday April 12, 1987, wherein the following report appears:

The Supreme Court has laid down that the Insurance Company must compensate even in cases where an accident was caused by a driver who

had no licence or had been disqualified from driving. In this significant judgment,

the Court also settled the different views taken by the various High Courts on this question.

In this particular case, the driver of the truck left the engine on and went to a shop to buy snacks leaving the vehicle in charge of a cleaner.

The cleaner meddled with the truck and caused an accident killing the husband of the claimant. Though there was no dispute as to the facts, the

Insurance Company maintained that they were exempted from paying the compensation as the vehicle was driven by an unauthorised person. They

quoted Section 96(2)(B)(II) of the Motor Vehicles Act

Justices M.P. Thakkar and B.C. Ray read down this section to bring it in tune with modern times.

"The purpose of the Act is to relieve misery of the, victims. The obligation on the Insurance Company, surely, has not been imposed to promote

the business of Automobile Insurance.

The Judges pointed out,

In this case, the insured has done everything within his power inasmuch as he had engaged a licensed driver and asked him to drive the truck

himself. It is only in case of a breach of the promise on the part of the insured that the Insurance Company can claim exemption. The ruling was

passed in the Skandia Insurance Co. v. Kokilaben Chandravadan case.

3. So far as the quantum of compensation is concerned, there is no dispute between both the parties. Therefore, no evidence need be recorded as

regards the quantum of compensation. So far as the liability of the Insurance Company is concerned, R.W. 1 has to be further examined with

respect to this aspect, and as much remand is hereby made to the Tribunal to consider these two aspects, namely, the terms of the Insurance

policy-Whether it is specifically made clear therein that the failure on the part of the driver of the vehicle in not possessing a valid licence during the

time of the occurrence will absolve its responsibility and with respect to the production of the driver's licence alleged to have been possessed by

R.W. 1 during the time of occurrence. With respect, to the above two aspects alone, the remand is made to the Tribunal Both the sides are at

liberty to adduce evidence relating to these two aspects.

4. This appeal is allowed and the matter is remanded to the Tribunal for fresh

disposal in accordance with law. But so far as the quantum of compensation and rashness, and negligence are concerned, the finding of the Tribunal are confirmed. There need not be further probe into those aspects. We are now concerned in this remand about the liability of the Insurance Company in relation to the terms of the policy entered into between the first respondent - the owner of the vehicle and the Insurance Company, and the licence granted by the traffic authorities to R.W. I. The Tribunal need not be influenced by any of the observations made in this remand order, but only to consider this aspect and give a finding, definitely whether the Insurance Company is liable to pay the compensation or not, especially when R.W. 1 has admitted that he was having only a learner's licence. Both the learner's licence alleged to have been possessed by R.W. 1 as well as the policy have to be exhibited in this case as documentary evidence.

5. The court-fee paid on this memorandum of appeal will be refunded to the appellant. An award has to be given in this case within three months from date of receipt of records in this case by the Tribunal. Under the circumstances, there will be no order as to costs.